

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ANNE A. DUBOIS,

Plaintiff,

-against-

Docket No.: 07-cv-7739 (LLS)

COHEN & SLAMOWITZ, LLP, METRO  
PORTFOLIOS, INC., J & E PROCESS SERVICE,  
INC., and ROBERTO LAGOS,

**ANSWER WITH AFFIRMATIVE  
DEFENSES, CROSS-CLAIMS  
AGAINST ALL CO-  
DEFENDANTS, REPLY TO  
CROSS-CLAIM OF COHEN &  
SLAMOWITZ, LLP AND  
METRO PORTFOLIOS, INC.,  
AND REPLY TO CROSS-CLAIM  
OF J & E PROCESS SERVERS,  
INC.**

Defendants.

-----X

Defendant Roberto Lagos, by his attorneys, Winget, Spadafora & Schwartzberg,  
LLP, as and for his Answer to the Plaintiff's Complaint ("Complaint"), alleges as  
follows:

**AS AND FOR AN ANSWER TO "INTRODUCTION"**

1. Roberto Lagos denies knowledge and information sufficient to form a  
belief as to the truth or falsity of the allegations contained in Paragraph  
"1" of the Complaint, and refers the Court to the Plaintiff's Complaint  
dated August 30, 2007, for its language, intent, and legal meaning.

**AS AND FOR AN ANSWER TO “JURISDICTION AND VENUE”**

2. Roberto Lagos denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph “2” of the Complaint, and refers all questions of law to the Court.
3. Roberto Lagos denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph “3” of the Complaint, and refers all questions of law to the Court.

**AS AND FOR AN ANSWER TO “PARTIES”**

4. Roberto Lagos denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph “4” of the Complaint.
5. Roberto Lagos denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph “5” of the Complaint, and refers all questions of law to the Court.
6. Roberto Lagos denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph “6” of the Complaint.
7. Roberto Lagos denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph “7” of the Complaint.

8. Roberto Lagos denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph “8” of the Complaint.
9. Roberto Lagos denies each and every allegation contained in Paragraph “9” of the Complaint.
10. Roberto Lagos denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph “10” of the Complaint, and refers all questions of law to the Court.

**AS AND FOR AN ANSWER TO “FACTUAL ALLEGATIONS”**

11. Roberto Lagos denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph “11” of the Complaint.
12. Roberto Lagos denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph “12” of the Complaint.
13. Roberto Lagos denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph “13” of the Complaint.
14. Roberto Lagos denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph “14” of the Complaint, and refers all questions of law to the Court.

15. Roberto Lagos denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph “15” of the Complaint.
16. Roberto Lagos denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph “16” of the Complaint.
17. Roberto Lagos denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph “17” of the Complaint.
18. Roberto Lagos denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph “18” of the Complaint.
19. Roberto Lagos denies each and every allegation contained in Paragraph “19” of the Complaint.
20. Roberto Lagos denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph “20” of the Complaint, and refers the Court to New York CPLR sections 308 (1) and (2) for their language, intent, and legal meaning.
21. Roberto Lagos denies each and every allegation contained in Paragraph “21” of the Complaint and refers the Court to the affidavit of service referred to therein for its language, intent, and legal meaning.

22. Roberto Lagos denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph “22” of the Complaint.
23. Roberto Lagos denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph “23” of the Complaint.
24. Roberto Lagos denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph “24” of the Complaint.
25. Roberto Lagos denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph “25” of the Complaint.
26. Roberto Lagos denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph “26” of the Complaint.
27. Roberto Lagos denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph “27” of the Complaint.
28. Roberto Lagos denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph “28” of the Complaint.

29. Roberto Lagos denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph “29” of the Complaint.
30. Roberto Lagos denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph “30” of the Complaint.
31. Roberto Lagos denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph “31” of the Complaint.
32. Roberto Lagos denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph “32” of the Complaint.
33. Roberto Lagos denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph “33” of the Complaint.
34. Roberto Lagos denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph “34” of the Complaint, except denies each and every allegation contained in Paragraph “34” of the Complaint as to Roberto Lagos.

**AS AND FOR AN ANSWER TO “FIRST CLAIM FOR RELIEF”**

35. Roberto Lagos repeats and realleges his responses to Paragraph “1” through “34” of the Complaint as if fully set forth at length herein.

36. Roberto Lagos denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph “36” of the Complaint, except denies each and every allegation contained in Paragraph “36” of the Complaint as to Roberto Lagos, and refers all questions of law to the Court.
37. Roberto Lagos denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph “37” of the Complaint, except denies each and every allegation contained in Paragraph “37” of the Complaint as to Roberto Lagos, and refers all questions of law to the Court.

**AS AND FOR AN ANSWER TO “SECOND CLAIM FOR RELIEF”**

38. Roberto Lagos repeats and realleges his responses to Paragraph “1” through “37” of the Complaint as if fully set forth at length herein.
39. Roberto Lagos denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph “39” of the Complaint, and refers all questions of law to the Court.
40. Roberto Lagos denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph “40” of the Complaint, and refers all questions of law to the Court.

**AS AND FOR AN ANSWER TO “THIRD CLAIM FOR RELIEF”**

41. Roberto Lagos repeats and realleges his responses to Paragraph “1” through “40” of the Complaint as if fully set forth at length herein.
42. Roberto Lagos denies each and every allegation contained in Paragraph “42” of the Complaint, and refers all questions of law to the Court.
43. Roberto Lagos denies each and every allegation contained in Paragraph “43” of the Complaint, and refers all questions of law to the Court.

**AS AND FOR AN ANSWER TO “FOURTH CLAIM FOR RELIEF”**

44. Roberto Lagos repeats and realleges his responses to Paragraph “1” through “43” of the Complaint as if fully set forth at length herein.
45. Roberto Lagos denies each and every allegation contained in Paragraph “45” of the Complaint, and refers all questions of law to the Court.
46. Roberto Lagos denies each and every allegation contained in Paragraph “46” of the Complaint, and refers all questions of law to the Court.
47. Roberto Lagos denies each and every allegation contained in Paragraph “47” of the Complaint, and refers all questions of law to the Court.

**AS AND FOR AN ANSWER TO “FIFTH CLAIM FOR RELIEF”**

48. Roberto Lagos repeats and realleges his responses to Paragraph “1” through “47” of the Complaint as if fully set forth at length herein.
49. Roberto Lagos denies each and every allegation contained in Paragraph “49” of the Complaint, and refers all questions of law to the Court.



50. Roberto Lagos denies each and every allegation contained in Paragraph “50” of the Complaint, and refers all questions of law to the Court.
51. Roberto Lagos denies each and every allegation contained in Paragraph “51” of the Complaint, and refers all questions of law to the Court.

**AS AND FOR AN ANSWER TO “SIXTH CLAIM FOR RELIEF”**

52. Roberto Lagos repeats and realleges his responses to Paragraph “1” through “51” of the Complaint as if fully set forth at length herein.
53. Roberto Lagos denies each and every allegation contained in Paragraph “53” of the Complaint, and refers all questions of law to the Court.
54. Roberto Lagos denies each and every allegation contained in Paragraph “54” of the Complaint, and refers all questions of law to the Court.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

55. The Complaint fails to state a cause of action upon which relief may be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

56. If the Plaintiff sustained any damages as alleged in the Complaint, all of which is expressly denied, then such damages were caused, either in whole or in part, by the Plaintiff’s own or her agents’ culpable conduct, fault and/or negligence, and any recovery herein shall be diminished accordingly in whole or in part.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

57. If the Plaintiff has sustained any damages as alleged in the Complaint, all of which is expressly denied, then such damages were caused by the culpable conduct, fault and/or negligence of other persons and/or entities over which Defendant Roberto Lagos had no control, with no act or omission on the part of said Defendant contributing thereto.

**AS AND FOR FOURTH AFFIRMATIVE DEFENSE**

58. The damages alleged to have been suffered by the Plaintiff were caused in whole or in part by the conduct of persons or entities other than Defendant Roberto Lagos. Therefore, Plaintiff's claims are barred or diminished in the proportion that such culpable conduct of other persons or entities bear to the total culpable conduct causing damages.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

59. The Plaintiff's claims are barred by the equitable doctrines of laches, waiver, estoppel and unclean hands.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

60. The Plaintiff is barred from recovering by virtue of her failure to mitigate her damages.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

61. Any award of damages to the Plaintiff shall be reduced, pursuant to CPLR 4545(c), by the amount of any item of damages which has been, or will, with reasonable certainty, be replaced or indemnified from a collateral source.

**AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE**

62. Any liability of Defendant Roberto Lagos to the Plaintiff, all of which is expressly denied, is limited by the provisions of Article 16 of the CPLR.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

63. One or more of the Plaintiff's claims may be barred by an applicable statute of limitations.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

64. The answering Defendant reserves the right to raise any and all other defenses that may become evident during discovery and during any other proceedings in this action.

**AS AND FOR CROSS-CLAIMS AGAINST ALL CO-DEFENDANTS**

65. If the Plaintiff has incurred any damages as alleged, all of which is expressly denied, and if judgment is recovered by the Plaintiff against Roberto Lagos, it is hereby asserted that Roberto Lagos' liability was not morally culpable, but was merely constructive, technical, imputed or vicarious, and that the damage to the Plaintiff arose through the direct and primary fault of the codefendants Cohen & Slamowitz, LLP, Metro Portfolios, Inc. and/or J & E Process Services, Inc., without any culpable conduct on the part of Defendant Roberto Lagos contributing thereto. By reason of the foregoing, the Defendant, Roberto Lagos, will be entitled to contribution and/or indemnification from said codefendants for all sums as may be found against Roberto Lagos in favor of the Plaintiff.

**REPLY TO CROSS-CLAIM OF J & E PROCESS SERVICES, INC.**

66. Roberto Lagos denies each and every allegation contained in Paragraph "31" of the J & E Answer.

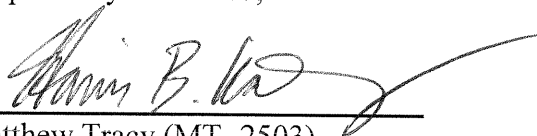
**REPLY TO CROSS-CLAIM OF DEFENDANTS COHEN & SLAMOWITZ, LLP  
and METRO PORTFOLIOS, INC.**

67. Roberto Lagos denies each and every allegation contained in Paragraph "13" of the Cohen & Slamowitz, LLP. and Metro Portfolios, Inc. Answer.

**WHEREFORE**, Defendant Roberto Lagos respectfully demands judgment dismissing the Plaintiff's Complaint in its entirety with prejudice, and dismissing all cross-claims asserted against Defendant in their entirety with prejudice, and granting Defendant judgment on his cross-claims, together with reasonable costs, attorneys' fees and such other and further relief as the Court may deem just and proper under the circumstances.

Dated: New York, New York  
January 15, 2008

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Harris B. Katz", is written over a horizontal line.

Matthew Tracy (MT- 2503)  
Harris B. Katz (HK – 1000)  
Winget, Spadafora & Schwartzberg, LLP  
45 Broadway, 19<sup>th</sup> Floor  
New York, New York 10006  
212-221-6900  
212-221-6969 (fax)  
*Attorneys for Defendant Roberto Lagos*